

MEMORANDUM FOR MR. HOUSTON

22 November 1950

SUBJECT: Legality of More Than 40-hour Workweek

1. This memorandum is in supplement to my memorandum of 17 November 1950 on the above subject and in answer to [REDACTED] in- STATINTL query whether, if a workweek in excess of 40 hours is administratively established, employees who refuse to work more than 40 hours may be discharged.

2. The fact that hours of work in excess of 40 may be required by an agency is implied in the various authorities cited and quoted in my memorandum of 17 November. No decisions have been found on the point, but this implication is present in various decisions of the Comptroller General which have been read. For example, in 21 Comp. Gen. 965 a proposed order of the War Department, which was not questioned on this point by the Comptroller General, stated:

"Refusal on the part of any employee to work in excess of the administrative work weeks herein prescribed will be the basis for disciplinary action by the Department."

Also in 25 Comp. Gen. 14 the Comptroller General stated:

". . . it is proper for the head of an agency to prescribe a regularly scheduled administrative workweek to consist of a 40-hour basic workweek plus such period of overtime work as will be regularly required . . ."

3. The basic authority under which the head of an agency may establish an obligatory administrative workweek in excess of 40 hours is contained in 5 USCA § 22, which reads as follows:

"Departmental regulations. The head of each department is authorized to prescribe regulations, not inconsistent with law, for the government of his department, the conduct of its officers and clerks, the distribution and performance of its business, and the custody, use, and preservation of the records, papers, and property appertaining to it."

In the annotations to 5 USCA § 22 the following syllabus is set forth referring to an Opinion of the Attorney General which we do not have in our library:

"Under the provisions of this section, authorizing the heads of departments to prescribe regulations, there seems to be no limitation to the right of such heads to demand service of their subordinates, and

applications for annual or sick leave and reasons for extending or limiting hours of labor are matters entrusted by statute to the discretion of departmental heads."

4. Since an administrative workweek of more than 40 hours may be established by an agency, refusal to work more than 40 hours is a disobedience of lawful instructions and cause for dismissal. The appropriate procedures governing dismissals must, of course, be followed.

5. Unless desired, no attempt will be made to review the laws and regulations applicable to dismissal for disobedience of instructions. However, for the Government generally the decision of the department concerned is final in such matters, except for persons covered by the Veterans' Preference Act (5 USC 863), who have certain special rights in the handling of their cases and the right of appeal to the Civil Service Commission.

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cross reference: 314 D Terminations, Resignations, Discharges

MEMORANDUM FOR MR. HOUSTON

17 November 1950

SUBJECT: Legality of More Than 40-hour Workweek

1. The heads of Government departments are required by the Federal Employees Pay Act of 1945 (5 U.S.C. 944) to establish a basic workweek of 40 hours, the work to be performed in not more than six of any seven consecutive days.
2. As defined in the Federal Personnel Manual, an "administrative workweek" is a period of seven consecutive calendar days and consists of the "basic workweek" of 40 hours, plus such period of overtime as will be regularly required. Hours worked in excess of forty in any administrative workweek must be paid for at overtime rates (5 U.S.C. 911).
3. The President, in a memorandum to the heads of departments and agencies, dated August 23, 1945, established as general governmental policy an administrative workweek of 40 hours. A quotation from the memorandum is contained on page H2-1 of the Federal Personnel Manual, as follows:

"It is my desire that no later than the week beginning September 9, 1945, all departments and agencies reduce their regularly scheduled administrative workweek to the basic 40 hours per week, unless such reduction in hours would result in a serious detriment to their essential operations. This will permit the establishment of a 5-day week whenever feasible. In those cases where you decide that it is absolutely necessary to temporarily maintain a workweek in excess of 40 hours, please report to the Director of the Bureau of the Budget the reasons for your decision."
4. The Bureau of the Budget advises that the President's memorandum of August 23, 1945, has not been superseded. Hence, CIA may increase the administrative workweek of all or part of the Agency to more than 40 hours, if necessary in order to carry out essential operations. A letter setting forth generally the reasons for the increase should be sent to the Bureau of the Budget.
5. Nothing has been found to indicate that work in excess of 40 hours must be on a voluntary basis, although such a policy was laid down in a letter from the Acting Executive to the Assistant Director for Collection and Dissemination, dated 11 August 1950.

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Mr. T. [redacted] OPC

